

March 23, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Basic Service Tier Encryption, MB Docket No. 11-169, PP Docket No. 00-67

Dear Ms. Dortch:

On March 21, 2012, Amy Tykeson, President and CEO of Bend Cable Communications, LLC (“BendBroadband”), and undersigned counsel met with Commissioner Mignon Clyburn and Dave Grimaldi, Chief of Staff for Commissioner Clyburn, to support adoption of the Commission’s proposal to allow cable operators to encrypt basic programming.

In the meeting, we responded to a question posed by Boxee in its March 1, 2012 ex parte letter, which states:

The BendBroadband Letter, for example, states that without encryption, BendBroadband will have to place traps at the homes of its 4,400 broadband-only customers. But BendBroadband completed its all-digital conversion over three years ago – if access to ClearQAM by broadband customers is of such high concern, why has BendBroadband not taken steps to address it in the past three years?

The answer is simple: encryption is the obvious solution, but the Commission’s outdated regulations prevent it. The only alternative, analog traps, would adversely impact customers in many important ways. BendBroadband therefore did not want to employ them if avoidable, as it

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hoped would be the case after the Commission permitted Cablevision to encrypt its basic services. But the problem has magnified over the past three years as the number of broadband-only customers has steadily increased. That trend is likely to continue – among other reasons because companies like Boxee seek to urge consumers to take our basic services without paying for them. BendBroadband and others have clearly demonstrated that permitting cable operators to encrypt basic services, as its DBS competitors do, would better serve the public interest. It is not logical to deploy a crude and costly anachronistic analog trap system on a modern all-digital network when the Commission has proposed a rule change that offers a clearly superior alternative. But if the Commission were to continue to prohibit encryption, BendBroadband would be compelled to revisit its decision so far not to use traps, despite their significant costs and adverse impacts on the network, in order to secure its digital programming.

We explained that deploying traps is not only expensive, but more importantly would handcuff our ability to make changes to our spectrum allocation, would impair our ability to diagnose, repair, and manage our system and maximize broadband speeds, and would pose a physical risk to the cable plant and cause additional service outages. Traps, by their very nature of filtering certain RF signals, impede the ability for a cable operator to diagnose, repair, and manage the cable system, because they prevent not only reception of unauthorized video services but also block the tools we use to monitor and manage our network. Because our tools cannot

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see through a trap,¹ it would be a game of cat and mouse to find ingress and egress interference because we would have to send trucks out to look behind every trap in the affected area until we find it. *Traps would therefore reduce our broadband speeds*, because (i) interference degrades broadband² and traps impair our ability to detect, isolate, and respond to interference and other service-affecting problems in the network; and (ii) traps undermine our ability to use dynamic network management tools that increase the reliability of our broadband services and therefore increase average broadband speeds; and (iii) traps both cause service outages and delay our ability to address them.

Traps would have to be custom-built for our current configuration and are not adaptable to change. *BendBroadband would have to spend hundreds of thousands of dollars each time to replace all of its traps every time that it changed its spectrum allocation.* For example, without changing out all of its traps, BendBroadband could not allocate spectrum for IP transmissions, or additional spectrum for broadband, or shift to enabling dynamic channel tuning across a wide band. This would severely limit our ability to be nimble and adapt to the needs of our customers and take advantage of new innovations that become available in a fast-changing, innovative market. Even if we could avoid changing traps for a few years, a complete change-out would

¹ The tools used to isolate and correct ingress and noise operate by reflecting signals in the plant off terminal devices in the home. A trap would block these signals.

² BendBroadband uses Advanced TDMA (ATDMA), which enables faster broadband speeds but which has a low tolerance for ingress and noise interference.

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very likely be needed mid-decade when BendBroadband is scheduled to replace some of its existing infrastructure with next-generation technology.

It would be even more illogical to conclude that our customers would be better off if BendBroadband was forced to spend its precious investment resources on an analog trap technology that is not only outdated but actually undermines the benefits of BendBroadband's digital conversion. We, and not Boxee, are the ones who have invested millions of dollars in central Oregon. We were the first company in Oregon to offer broadband, the first in the country to provide LTE fixed-wireless broadband service, and the first all-digital cable system in the mainland United States. We offer 100+ channels of HD and 100 mbps DOCSIS 3.0 broadband today. These are the investments that have made over-the-top services such as Boxee possible in the first place. We are excited to have helped make such innovation possible. But our ability to deliver new technologies will be impaired unless the Commission provides us with the flexibility, enjoyed by our DBS and IP competitors, to rely on encryption that is a necessary component of a secure digital network.

We understand why Boxee would be happy to force us to underwrite their business model at the expense of the 99%+ of our customers who do not use Boxee's equipment. But it would be wrong to conclude that 100% of our customers would be better off bearing the significant cost and disadvantages of traps just so that less than 1% of our customers can avoid paying \$2 per month for a set-top box (and that only after any requirement for free boxes expires). As the

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company explained in its prior submissions, traps would cost its customer base more than \$700,000, compared to the \$1750 that would be needed to purchase the approximately 35 additional set-top boxes that would be required as a result of encryption.

Boxee tries to argue that the Commission should be concerned about customers' need for additional set-top boxes, but that ship has already sailed. When BendBroadband began its transition to an all-digital network, only 55% of its customers had set-top boxes. After the transition just a short time later, 100% had an average of 2.7 boxes per home. BendBroadband deployed approximately 35,000 additional set-top boxes during this time, compared to approximately 35 that would be needed as a result of encryption. But the Commission did not block BendBroadband's plan to transition to all-digital on the grounds that it would require a thousand-times more new set-top boxes than encryption. On the contrary, the Commission encouraged it, finding that it "would allow it to reclaim a considerable amount of spectrum within a clearly defined timeframe, which would enable it to provide consumers with advanced telecommunication capabilities, thereby furthering the goals of Section 706."³

The Commission is familiar with the success of encryption implemented by Cablevision. In addition, in Puerto Rico, where the Commission permitted operators to encrypt their basic tier a decade ago, there is no evidence that consumers have suffered. The Commission imposed only

³ *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7057-Z, Memorandum Opinion and Order, DA 07-47, ¶¶ 24-25 (rel. Jan. 10, 2007) ("*BendBroadband Waiver Order*").

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one condition – that the operators could not impose an installation charge on customers needing a set-top box as a result of encryption.⁴ The Commission did not require any boxes to be provided for free, even to low-income customers. The median household income in Puerto Rico is only \$18,862, compared to more than \$50,000 for the United States as a whole.⁵ Encryption has been a success in Puerto Rico and Long Island; there is no reason to expect it would be a problem in Bend, Oregon or elsewhere. In fact, this is obviously so, given that every single one of the nearly 40 million customers of three of the largest MVPDs (DirecTV, DISH and AT&T) receive only encrypted programming accessed with a set-top box.

Allowing all-digital cable operators to encrypt basic programming will not adversely affect the vast majority of cable subscribers, and the benefits that will result far exceed in the aggregate the modest additional costs that could be experienced by the tiny handful of consumers. The public interest balance therefore weighs in favor of granting this long overdue relief from the Commission's by-gone analog-era regulation.

Respectfully submitted,



Paul B. Hudson
Counsel for Bend Cable Communications, LLC

⁴ Liberty Cablevision of Puerto Rico, Inc. Petition for Waiver of Section 76.630(a) Basic Tier Scrambling, Mem. Op. and Order, 15 FCC Rcd 15064 (2000).

⁵ *Household Income for States: 2009 and 2010, American Community Survey Briefs*, U.S. Census Bureau (Sept. 2011) at 5, available at <http://www.census.gov/hhes/www/income/income.html>.